



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 23 2021

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER OF THE DEPARTMENT OF DEFENSE
UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND
READINESS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
UNDER SECRETARY OF THE ARMY
COMMANDER, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Department of Defense Actions Regarding the Proclamation of January 20, 2021,
Termination of Emergency with Respect to the Southern Border of the United States
and Redirection of Funds Diverted to Border Wall Construction

In the attached proclamation of January 20, 2021, "Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction," the President terminated the national emergency with respect to the southern border, declared in Proclamation 9844, and continued on February 13, 2020 (85 Fed. Reg. 8715), and January 15, 2021 (86 Fed. Reg. 6557), and the authorities based on that emergency, and directed further actions related to construction of border barriers. The termination of the national emergency eliminates the authority to issue orders for units and members under title 10, U.S. Code, section 12302, but does not otherwise affect the authority to continue supporting the Department of Homeland Security at the southern border outside the framework of the terminated national emergency.

To implement the President's direction, the following actions shall be initiated:

- The Under Secretary of Defense for Policy (USD(P)) shall undertake, in coordination with the Commander, U.S. Army Corps of Engineers, and the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), and in consultation with the Director of the Office of Management and Budget, the following actions:
 - An assessment of the administrative and contractual consequences of ceasing each border barrier construction project authorized pursuant to title 10, U.S. Code, sections 284 and 2808.
 - A compilation of detailed information on all southern border wall construction contracts authorized pursuant to title 10, U.S. Code, sections 284 and 2808, the completion status of each wall construction project, including any land acquisition, and the funds used for wall construction since February 15, 2019.
- The USD(P) shall develop, in coordination with the USD(C)/CFO, and in consultation with the Secretary of the Treasury, the Attorney General, the Director of



the Office of Management and Budget, and the heads of any other appropriate executive departments and agencies, and in consultation with the Assistant to the President for National Security Affairs, a “Plan for Redirecting Funding and Repurposing Contracts” required in section 2 of the President’s proclamation for projects authorized pursuant to title 10, U.S. Code, sections 284 and 2808. The Plan must be completed within the timeframe established in the President’s proclamation of January 20, 2021.

- With respect to the 11 border barrier military construction projects authorized under the Secretary of Defense memorandum, “Guidance for Undertaking Military Construction Projects Pursuant to Section 2808 of Title 10, U.S. Code,” dated September 3, 2019, the Secretary of the Army shall cease exercising the authority provided by section 2808 to award contracts or options on existing contracts, incur new obligations that advance project performance, or incur new expenses unrelated to existing contractual obligations. This direction applies to land acquisition and to all aspects of construction.
- The Secretary of the Army shall direct the Commander, U.S. Army Corps of Engineers, to take immediate action to pause work on all border barrier military construction projects authorized by title 10, U.S. Code, sections 284 and 2808, to the extent permitted by law, as soon as possible, but in no case later than 1700 EST, Wednesday, January 27, 2021. The Secretary of the Army may authorize the Commander, U.S. Army Corps of Engineers, to approve exceptions to the pause for urgent measures needed to avert immediate physical dangers. Additionally, if the Commander, U.S. Army Corps of Engineers, believes an exception to the pause is required to ensure that funds appropriated by the Congress fulfill their intended purpose, he shall immediately ask the Secretary of the Army to submit a request through the USD(P) for my decision.
- The Commander, U.S. Army Corps of Engineers, shall cease exercising the authority provided by title 10, U.S. Code, section 284(b)(7), to award contracts or options on existing contracts, incur new obligations that advance project performance, or incur new expenses unrelated to existing contractual obligations. This direction applies to all aspects of construction and installation.
- The Commander, U.S. Army Corps of Engineers, shall take immediate action to pause work on all projects authorized by title 10, U.S. Code, section 284(b)(7), to the extent permitted by law, as soon as possible, but in no case later than 1700 EST, Wednesday, January 27, 2021. The Commander, U.S. Army Corps of Engineers, may approve exceptions to the pause for urgent measures needed to avert immediate physical dangers. If the Commander, U.S. Army Corps of Engineers, believes an exception to the pause is required to ensure that funds appropriated by the Congress fulfill their intended purpose, he shall immediately submit a request through the USD(P) for my decision.
- The Commander, U.S. Army Corps of Engineers, shall promptly seek direction from the Department of Homeland Security regarding border barrier projects undertaken by

the Department of Homeland Security for which the U.S. Army Corps of Engineers is the construction agent.

- The General Counsel of the Department of Defense shall undertake an assessment of the legality of the funding and contracting methods used to construct border barriers pursuant to title 10, U.S. Code, sections 284 and 2808.
- The Under Secretary of Defense for Personnel and Readiness shall issue guidance to ensure there is no further exercise of authority pursuant to title 10, U.S. Code, section 12302, related to the emergency along the southern border.

A handwritten signature in black ink, appearing to read "Dw L M t", is positioned in the center-right of the page.

Attachment:
As stated

Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction

January 20, 2021

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Like every nation, the United States has a right and a duty to secure its borders and protect its people against threats. But building a massive wall that spans the entire southern border is not a serious policy solution. It is a waste of money that diverts attention from genuine threats to our homeland security. My Administration is committed to ensuring that the United States has a comprehensive and humane immigration system that operates consistently with our Nation's values. In furtherance of that commitment, I have determined that the declaration of a national emergency at our southern border in Proclamation 9844 of February 15, 2019 (Declaring a National Emergency Concerning the Southern Border of the United States), was unwarranted. It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall. I am also directing a careful review of all resources appropriated or redirected to construct a southern border wall.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 202 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), hereby declare that the national emergency declared by Proclamation 9844, and continued on February 13, 2020 (85 *Fed. Reg.* 8715), and January 15, 2021, is terminated and that the authorities invoked in that proclamation will no longer be used to construct a wall at the southern border. I hereby further direct as follows:

Section 1. Pause in Construction and Obligation of Funds. (a) The Secretary of Defense and the Secretary of Homeland Security, in consultation with the Director of the Office of Management and Budget, shall direct the appropriate officials within their respective departments to:

(i) pause work on each construction project on the southern border wall, to the extent permitted by law, as soon as possible but in no case later than seven days from the date of this proclamation, to permit:

(A) assessment of the legality of the funding and contracting methods used to construct the wall;

(B) assessment of the administrative and contractual consequences of ceasing each wall construction project; and

(C) completion and implementation of the plan developed in accordance with section 2 of this proclamation;

(ii) pause immediately the obligation of funds related to construction of the southern border wall, to the extent permitted by law; and

(iii) compile detailed information on all southern border wall construction contracts, the completion status of each wall construction project, and the funds used for wall construction since February 15, 2019, including directly appropriated funds and funds drawn from the Treasury Forfeiture Fund (31 U.S.C. 9705(g)(4)(B)), the Department of Defense Drug Interdiction and Counter-Drug Activities account (10 U.S.C. 284), and the Department of Defense Military Construction account (pursuant to the emergency authorities in 10 U.S.C. 2808(a) and 33 U.S.C. 2293(a)).

(b) The pause directed in subsection (a)(i) of this section shall apply to wall projects funded by redirected funds as well as wall projects funded by direct appropriations. The Secretary of Defense and the Secretary of Homeland Security may make an exception to the pause, however, for urgent measures needed to avert immediate physical dangers or where an exception is required to ensure that funds appropriated by the Congress fulfill their intended purpose.

Sec. 2. Plan for Redirecting Funding and Repurposing Contracts. The Secretary of Defense and the Secretary of Homeland Security, in coordination with the Secretary of the Treasury, the Attorney General, the Director of the Office of Management and Budget, and the heads of any other appropriate executive departments and agencies, and in consultation with the Assistant to the President for National Security Affairs, shall develop a plan for the redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law. The process of developing the plan shall include consideration of terminating or repurposing contracts with private contractors engaged in wall construction, while providing for the expenditure of any funds that the Congress expressly appropriated for wall construction, consistent with their appropriated purpose. The plan shall be developed within 60 days from the date of this proclamation. After the plan is developed, the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects and to otherwise implement the plan.

Sec. 3. Definition. Consistent with Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements), for the purposes of this proclamation, “wall” means a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.

Sec. 4. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.

JOSEPH R. BIDEN JR.